Pinetree Transportation Company *and* Automotive Employees, Laundry Drivers and Helpers, Local 88, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 31-CA-9953

April 2, 1981

DECISION AND ORDER

Upon a charge filed on April 11, 1980, by Automotive Employees, Laundry Drivers and Helpers, Local 88, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Pinetree Transportation Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 31, issued a complaint on May 9, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on January 16, 1980, following a Board election in Case 31-RC-4498, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about March 31, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On May 20, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On June 6, 1980, counsel for the General Counsel filed directly with the Board a "Motion to Transfer Case to and Continue Proceeding Before the Board and for Summary Judgment." Subsequently, on June 13, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and in its opposition to the Motion for Summary Judgment and Response to Notice To Show Cause, Respondent contends that it has no obligation to bargain with the Union and cannot be in violation of the Act for failure to do so because the complaint is premised upon the alleged validity of the election held on January 8, 1980, in Case 31-RC-4498, and the alleged invalidity of the first election held on July 18, 1979, in which the Union was rejected. Respondent maintains that the Regional Director's failure to provide a hearing after the first election and his unilateral determination without evidentiary support that the Union's objection to the first election was valid necessitates that the first election of July 18, 1979, be reconsidered and found to be valid. Respondent further contends that, since its Decision in Case 31-RC-4498, on November 29, 1979, the Board has either altered or clarified its former policy in such a way as to undermine and contradict that Decision thereby creating special circumstances warranting review herein.[2] The General Counsel contends that there are no factual issues that require a hearing and that all material issues raised by Respondent have been decided previously.

An election held on July 19, 1979, resulted in a vote of 17 for, and 25 against, the Union, with 8 challenged ballots, an insufficient number to affect the results. The Union filed timely objections to conduct affecting the election results alleging, *inter alia*, that the election notices posted by Respondent at its facilities set forth incorrect voting times and were not posted in a conspicuous place. On September 12, 1979, after investigation, the Regional Director issued his Report on Objections in which he recommended that the Union's objection to the Employer's failure to post notices of election in conspicuous places should be sustained, that the election held on July 18, 1979, be set aside, and that a new election be directed.

Respondent filed timely exceptions and on November 29, 1979, the Board issued a Decision and Direction of Second Election adopting the findings and recommendations in the Regional Director's Report on Objections. A second election held on

[1] Official notice is taken of the record in the representation proceeding, Case 31-RC-4498, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] In support of its contention, Respondent cites *Kane Industries*, 246 NLRB 738 (1979); *Printhouse Co.*, 246 NLRB 741 (1979); and *Earle Industries*, 248 NLRB 67 (1980).

January 8, 1980, resulted in a vote of 26 for, and 19 against, the Union, with no challenged ballots. On January 16, 1980, the Board certified the Union as exclusive bargaining representative of employees in the unit found appropriate.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[3]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence. Nor, in our judgment, does its allegation that special circumstances exist herein which require the Board to reexamine the decision made in the representation proceeding have merit.[4] We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the "Motion to Transfer Case to and Continue Proceeding Before the Board and for Summary Judgment."

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a California corporation with administrative offices in Westminster, California, and other places of business in Long Beach, Gardena, and Santa Ana, California, is engaged in providing school and charter bus services. Respondent has annual gross revenues in excess of $250,000 and annually purchases goods valued in excess of $50,000 directly from enterprises located outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Automotive Employees, Laundry Drivers and Helpers, Local 88, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All vehicle maintenance employees employed by the Employer at its Long Beach, Gardena and Westminster, California facilities, including cleaners, fuelers, mechanics, tiremen, upholsterers and partsmen, and building maintenance employees and plant clericals; excluding all other employees, office clerical employees, drivers, professional employees, guards, watchmen and supervisors as defined in the Act, as amended.

2. The certification

On January 8, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 31, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on January 16, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about February 29, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about March 31, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since March 31, 1980, and at all times thereafter, refused

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[3] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[4] Chairman Fanning and Member Jenkins either do not subscribe to the decisions cited in fn. 2, *supra*, or would distinguish their facts from those presented here.

Member Zimmerman, who did not participate in the underlying representation case, considers himself bound to grant summary judgment in this case without regard to the merits of the issues which Respondent now attempts to relitigate for the reason stated in his concurrence in *Bravos Oldsmobile, Inc.*, 254 NLRB No. 135 (1981).

to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Pinetree Transportation Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Automotive Employees, Laundry Drivers and Helpers, Local 88, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All vehicle maintenance employees employed by the Employer at its Long Beach, Gardena and Westminster, California, facilities, including cleaners, fuelers, mechanics, tiremen, upholsterers and partsmen, and building maintenance employees and plant clericals; excluding all other employees, office clerical employees, drivers, professional employees, guards, watchmen and supervisors as defined in the Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since January 16, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 31, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Pinetree Transportation Company, Westminster, Long Beach, Gardena, and Santa Ana, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Automotive Employees, Laundry Drivers and Helpers, Local 88, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All vehicle maintenance employees employed by the Employer at its Long Beach, Gardena and Westminster, California, facilities, including cleaners, fuelers, mechanics, tiremen, upholsterers and partsmen, and building maintenance employees and plant clericals; exclud-

ing all other employees, office clerical employees, drivers, professional employees, guards, watchmen and supervisors as defined in the Act, as amended.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its places of business in Westminster, Long Beach, and Gardena, California, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 31 after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Automotive Employees, Laundry Drivers and Helpers, Local 88, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All vehicle maintenance employees employed by the Employer at its Long Beach, Gardena and Westminster, California, facilities, including cleaners, fuelers, mechanics, tiremen, upholsterers and partsmen, and building maintenance employees and plant clericals; excluding all other employees, office clerical employees, drivers, professional employees, guards, watchmen and supervisors as defined in the Act, as amended.

PINETREE COMPANY TRANSPORTATION